Chai Bee Keong v Public Prosecutor

COURT OF APPEAL (PUTRAJAYA) — CRIMINAL APPEAL NO B-05–52–03 OF 2012
BALIA YUSOF, TENGKU MAIMUN AND HAMID SULTAN JJCA
6 AUGUST 2014

Criminal Procedure — Appeal — Appeal against conviction and sentence — Accused person convicted for offence of murder and sentenced to death — Penal Code s 302 — Accused person used hammer to ward off attack by deceased — Whether premeditation and motive existed — Whether injury caused to deceased intentional — Whether fact of case would attract Exception 4 of s 300 of the Penal Code — Whether defence case appropriately dealt with by trial court

The appellant in this case was convicted for murder, an offence under s 302 of the Penal Code ('the Code') and was sentenced to death. The appellant was employed by SP1 to do some renovation works. While doing the work with another Indonesian worker, a quarrel broke out between the appellant and the deceased. It was alleged that the deceased came with a stick, demanding for money and scolded the appellant and there was another Indian man with a *parang*. The appellant hit the deceased with a big hammer on the head and that caused the injury which was the cause of the death. The appellant only surrendered to the police after seven days. The appellant was then convicted in the High Court and sentenced to death. In the present appeal, the arguments by the appellant were that the trial judge erred in law and fact in failing to adequately consider the testimonies of the witnesses for the prosecution and defence; the learned judge erred in law and fact in failing to consider that the prosecution had failed to call witnesses who were present at the scene, in particular the victim's son, Sivakumar and an Indonesian named Mohd Ikhsan; the trial judge erred in law and fact in failing to consider the cautioned statement exh D11 and the police report where the appellant acted in self defence and had no mens rea to murder the victim; the trial judge erred in law and fact in failing to consider that the hammer in the appellant's hand was due to the fact that he was using the hammer for work purposes and the incident happened so quickly that the appellant had used the hammer to ward off the attack by the victim who was armed with a stick; there was no premeditation and motive in this case; and the injury caused to the victim was unintentionally caused by the appellant. The issues that arose for the court's consideration were whether the fact of the case would attract Exception 4 of s 300 of the Code; and whether the defence case was appropriately dealt with.

Held, dismissing the appeal:

A (1) The trial judge had considered the evidence as well as the two exhibits and found that the appellant had not made out a case of self defence or the Exception 4 of the Code. The threshold to satisfy for self defence under the Code is very high. The defence of self defence is not a passport to kill when even there is a purported threat to the body or the person (see B para 13(b)).

(2) It was difficult to even fathom how there could have been a threat by a known person to an employee and in a public place in the manner alleged by the appellant. The quarrel in this case originated from the deceased as C a result of the 'sign board' and ended up in one fatal blow by the hammer with no visible injury or assault on the appellant. The appellant did not make out a case of self defence (see para 13 (d)).

(3) The factual matrix did not warrant such injury and the use of the hammer to justify the Exception 4 of s 300 of the Code. The fact that the D police did not call other witness, by itself on the facts of the case, would not have assisted the appellant on the issue of self defence and/or Exception 4 of s 300 of the Code (see para 13(f)).

(4) The view taken by the trial court on the relevant issues was a reasonable E view of the evidence on record, and the court had followed *Radhi*'s direction and rightly applied the maximum evaluation and beyond reasonable test and convicted the appellant (see para 14).

[Bahasa Malaysia summary

F Perayu dalam kes ini disabitkan untuk pembunuhan, kesalahan di bawah s 302 Kanun Keseksaan ('Kanun') dan dijatuhkan hukuman mati. Perayu diambil bekerja oleh SP1 untuk membuat kerja-kerja pengubahsuaian. Semasa membuat kerja dengan seorang lagi pekerja berbangsa Indonesia, pergaduhan berlaku antara perayu dan si mati. Ia didakwa bahawa si mati menyerang G dengan kayu, meminta wang dan memarahi perayu dan terdapat seorang lagi lelaki India yang membawa parang. Perayu memukul si mati dengan tukul besar di atas kepala dan menyebabkan kescederaan yang menyebabkan kematian. Perayu hanya menyerah diri kepada polis selepas tujuh hari. Perayu kemudiannya disabitkan di Mahkamah Tinggi dan dijatuhkan hukuman mati. H Dalam rayuan ini, hujahan-hujahan oleh perayu adalah bahawa hakim perbicaraan tersilap dari segi undang-undang dan fakta kerana gagal untuk mempertimbangkan dengan wajar keterangan-keterangan saksi-saksi untuk pihak pendakwaan dan pembelaan; hakim yang bijaksana tersilap dari segi undang-undang dan fakta kerana gagal untuk mempertimbangkan bahawa I pihak pendakwaan telah gagal untuk memanggil saksi-saksi yang hadir di tempat kejadian, terutamanya anak mangsa, Sivakumar dan seorang berbangsa Indonesia bernama Mohd Ikhsan; hakim perbicaraan tersilap dari segi undang-undang dan fakta kerana gagal mempertimbangkan pernyataan beramaran Lampiran D11 dan laporan polis di mana perayu bertindak

mempertahankan diri dan tidak mempunyai mens rea untuk membunuh mangsa; tersilap dari segi undang-undang dan fakta kerana gagal mempertimbangkan bahawa tukul di dalam tangan perayu adalah kerana dia menggunakan tukul untuk tujuan kerja dan kejadian berlaku dengan cepat bahawa perayu menggunakan tukul tersebut untuk menangkis serangan oleh mangsa yang bersenjatakan kayu; tidak terdapat rancangan dan motif dalam kes ini; dan kecederaan yang dikenakan kepada mangsa adalah tidak sengaja disebabkan oleh perayu. Isu yang berbangkit untuk pertimbangan mahkamah adalah sama ada fakta kes akan menarik Pengecualian 4 s 300 Kanun; dan sama ada pembelaan dikendalikan dengan wajar.

Diputuskan, menolak rayuan:

(1) Hakim perbicaraan telah mempertimbangkan keterangan juga kedua-dua ekshibit dan mendapati bahawa perayu tidak dapat menunjukkan kes pertahanan diri atau Pengecualian 4 Kanun. Ambang untuk memenuhi untuk pertahanan diri di bawah Kanun adalah sangat tinggi. Pembelaan pertahanan diri bukanlah kebenaran untuk membunuh apabila terdapat ancaman kepada diri atau orang tersebut (lihat perenggan 13(b)).

(2) Adalah sukar untuk menduga bagaimana boleh terdapat ancaman oleh orang yang dikenali kepada pekerja dan di kawasan awam dalam cara yang didakwa oleh perayu. Pergaduhan dalam kes ini berasal daripada si mati akibat 'sign board' dan berakhir dengan satu pukulan fatal oleh tukul tanpa kecederaan atau serangan zahir ke atas perayu. Perayu tidak menunjukkan kes pertahanan diri (lihat perenggan 13(d)).

(3) Fakta matriks tidak mewajarkan kecederaan sedemikian dan penggunaan tukul untuk menjustifikasikan Pengecualian 4 s 300 Kanun. Fakta bahawa polis tidak memanggil saksi-saksi lain, dengan sendirinya atas fakta kes, tidak akan membantu perayu atas isu pertahanan diri dan/atau Pengecualian 4 s 300 Kanun (lihat perenggan 13(f)).

(4) Pandangan yang diambil oleh mahkamah perbicaraan atas isu relevan adalah pandangan munasabah terhadap keterangan atas rekod, dan mahkamah telah mengikut prinsip *Radhi* dan dengan betul mengguna pakai penilaian maksimum dan ujian keraguan munasabah dan menyabitkan perayu (lihat perenggan 14).]

Notes

For cases on appeal against conviction and sentence, see 5(1) *Mallal's Digest* (4th Ed, 2014 Reissue) paras 288–371.

Cases referred to

Alandu a/l Santhanasamy v PP [2014] 2 MLJ 508, CA (refd)
Chin Kek Shen v PP [2013] 5 MLJ 827, CA (refd)

A *Kyros International Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri* [2013] 2 MLJ 650, CA (refd)
Mohamad Radhi bin Yaakob v PP [1991] 3 MLJ 169, SC (refd)
PP v Mohd Aszzid Abdullah [2008] 1 MLJ 281, HC (refd)
Tong Kam Yew & Anor v PP [2013]4 MLJ 888, CA (refd)
B *Yusoff bin Kassim v PP* [1992] 2 MLJ 183, SC (refd)

Legislation referred to

Penal Code ss 300, Exception 4, 304

C **Appeal from:** Criminal Trial No 45B–85 of 2008 (High Court, Shah Alam)

RV Lingam (Khairul bin Mukhtar with him) (RV Lingam & Co) for the appellant.
Nadia Hanim bt Mohd Tajuddin (Deputy Public Prosecutor, Attorney General's D *Chambers) for the respondent.*

Hamid Sultan JCA:

E **[1]** The appellant's appeal in respect of conviction and sentence of death for murder came up for hearing on 9 April 2014 and on the same day upon hearing we dismissed the appeal. My learned brother Balia Yusof bin Hj Wahi JCA and my learned sister Tengku Maimun bt Tuan Mat have read the draft judgment. This is our judgment.

F PRELIMINARIES

[2] What is important to note in this case is that (a) the cause of the death is not in dispute; (b) the nature of the weapon used to cause the injury is also G not in dispute; (c) whether the weapon used and such force is necessary is one pertinent issue. Whether the fact of the case will attract Exception 4 of s 300 of the Penal Code appears to be the main issue in this appeal, to reduce the sentence of death to imprisonment under s 304 of the Penal Code. And whether the defence case was appropriately dealt with.

H **[3]** The charge reads as follows:

> Bahawa kamu pada 3 Oktober 2007 jam lebih kurang 5.30 petang di hadapan bangunan No. 28-G1, Jalan Perdana 6/6, Pandan Perdana, Ampang, di dalam Daerah Hulu Langat, di dalam Negeri Selangor Darul Ehsan, telah membunuh I Govindan a/l Rajagopal (KPT: 521219-10-5047) dan oleh yang demikian kamu telah melakukan suatu kesalahan yang boleh dihukum di bawah seksyen 302 Kanun Keseksaan.

[4] The petition of appeal, inter alia, reads as follows:

1. The learned judge erred in law and fact in failing to adequately consider the testimonies of the witnesses for the prosecution and defence.

2. The learned judge erred in law and fact in failing to consider that the prosecution witnesses had given 2 sets of evidence. In that situation, the benefit of the doubt should be given to the appellant.

3. The learned judge erred in law and fact in failing to consider that the prosecution had failed to call witnesses who were present at the scene, in particular the victim's son, Sivakumar and an Indonesian named Mohd Ikhsan.

4. The learned judge erred in law and fact in failing to consider the cautioned statement exhibit D11 and the police report where the appellant acted in self-defence and had no mens rea to murder the victim.

5. The learned judge erred in law and fact in failing to consider that the hammer in the appellant's hand was due to the fact that he was using the hammer for work purposes. And the incident happened so quickly that the appellant had used the hammer to ward off the attack by the victim who was armed with a stick.

6. There was no premeditation and motive in this case.

7. The injury caused to the victim was unintentionally caused by the appellant.

8. The police conducted an incomplete investigation.

9. The burden on the appellant was only to raise reasonable doubt. The learned trial judge had failed to apply the correct standard of proof in stating that the appellant's defence was a bare denial.

10. The learned trial judge rejected the defence in totality.

11. The learned judge erred in law and fact in failing to consider a case of manslaughter or culpable homicide not amounting to murder under exception 4 of section 300 Penal Code.

BRIEF FACTS

[5] The learned trial judge in a 13 page judgment had summarised the facts, the law and the defence case and have given quite a comprehensive grounds to arrive with the decision. We do not wish to regurgitate the facts save as to deal with the core issues.

[6] The appellant was employed by SP1 to do some renovation works. While the appellant was doing the work with another Indonesian worker, a quarrel broke out between the appellant and the deceased, in consequence of a signboard placed leaning on the deceased's motorcycle. The deceased was a known person and was staying nearby the place of the incident.

[7] It is the appellant's version that the deceased came with a stick and scolded him and there was another Indian man with a '*parang*'. The appellant said that the deceased also demanded money and attacked the appellant and in the spur of the moment the appellant had hit the deceased with a big hammer on the head and that caused the injury which was the cause of the death. That single blow on the head was sufficient in law to attract s 300 of the Penal Code.

[8] The appellant had only surrendered to the police after seven days and was assisted by his lawyer Gurbachan Singh at the police station at the time of the surrender to lodge the report.

[9] The appellant's police report (exh D12), inter alia, reads as follows:

> I, CHAI BEE KEONG (No. K/P: 78105-10-5169) of No. 692, Jalan Kundor, Pandamaran, 42000 Pelabohan Klang do wish to make the following report.
>
> Pada 3/10/07 saya tidur di rumah. Pada pukul 8.00 pagi seorang towkay nama 'Ah Yang' datang ke rumah saya di No. 692, Jalan Kundor, Pandamaran dan minta saya pergi kerja dengannya. Buat kerja mosaic.
>
> Saya punya towkay bawa saya pergi kerja dengan kereta di satu tempat di Kuala Lumpur. Saya sampai lebih kurang 9.30 pagi. Saya buat kerja cat di bangunan.
>
> Lebih kurang 3.00 p.m. saya sedang buka 'signboard' lama. Lebih kurang 5.00 p.m. dekat mahu siap. Saya kerja dengan 2 orang. Satu orang Indonesia dan towkay pun tolong kerja sedikit. Seorang India datang marah saya. Dia cakap dia sana taikoh dan minta wang. Saya cakap saya kerja sini. Saya tiada wang. Dia marah saya lagi kuat. Towkay saya pada masa itu sedang ambil kayu dekat tempat kerja. Orang India itu mari dekat saya mahu pukul saya. Bila dia ambil kayu dan di belakang orang India itu ada lagi satu orang India yang pegang satu *parang*. Saya sudah takut dan bila orang India yang ada depan angkat kayu mahu pukul saya. Masa itu saya ada pegang 'hammer' yang saya pakai untuk buat kerja. Saya ambil 'hammer' ke atas untuk tahan dari kena kayu dan bela diri. Masa itu 'hammer' telah kena kepada orang India satu kali. Dia punya kepala ada sedikit darah. Masa itu saya sudah lari masuk dalam kereta Iswara towkay. Towkay sudah bawa saya pergi dengan kereta dia ke rumah saya di Pandamaran.
>
> Pada besok hari towkay minta saya pergi kerja lagi. Saya tidak mahu. Towkay ada bayar saya RM50/- untuk kerja pada 3/10/07.
>
> Pada 4/10/07 towkay saya cakap dia sudah bayar RM1,000/- untuk itu orang India dan sudah settle hal.
>
> Pada 5/10/07 saya pergi kerja dengan towkay lain. Pada 5/10/07 malam polis ada cari saya. Pada 5/10/07 towkay 'Ah Yong' minta saya lari dari rumah kerana orang India itu sudah mati. Saya takut dan pergi duduk di rumah saudara saya.
>
> Pada 10/10/07 saya jumpa peguam dan peguam minta saya pergi ke Balai Polis dan serah diri. Saya langsung tidak cari kacau atau lawan. Saya dengar orang India itu mahu wang dari towkay saya.

[10] The wife of the deceased had also lodged a police report (exh P7) and it

reads as follows:

Lebih kurang jam 7.30 hrs. 03/10/07 suami saya nama Govindan a/l Raja Gopal K/P: 521219-10-5047 telah dipukul dengan tukul besi di kepala oleh 1(L) Cina yang tidak dikenali di depan rumah alamat seperti di atas. Kejadian itu juga disaksi oleh anak lelaki saya nama Sivakumar. Punca kejadian mungkin lelaki Cina tersebut tidak puas hati atas teguran suami saya suruh berhati-hati semasa buat kerja. Jangan sampai merosakkan kenderaan suami saya. Lelaki Cina tersebut sedang membuat pengubahsuaian papan tanda. Anak lelaki saya cuba mengerja lelaki Cina itu tetapi dia dapat melarikan diri. Saya dan anak lelaki saya bawa suami ke HUKM Cheras untuk rawatan lanjut. Keadaan suami saya masa itu pengsan dan tidak stabil.

[11] The appellant had also given a cautioned statement (exh D11) which, inter alia, reads as follows:

...

S: Cuba kamu ceritakan kepada saya, apakah sebab-sebabnya kamu ditangkap polis pada 10.10.2007.

J: Pada 10.10.2007 jam lebih kurang 4.30 petang, saya datang ke Balai Polis Ampang bersama peguambela untuk menyerah diri bagi kes saya mempertahankan diri daripada serangan 2 lelaki India yang bersenjatakan batang kayu dan pisau masing-masing. Kejadian itu berlaku pada hari Rabu 3/10/2007. Tempat kejadian saya tidak pasti sebab saya ikut majikan buat kerja ubahsuaian kedai. Keterangan sebenar akan saya cakap di Mahkamah nanti.

S: Apakah alat atau senjata yang anda guna untuk pertahankan diri?

J: Saya pegang tukul besi.

S: Adakah kamu guna tukul besi dan kena pada mana-mana orang?

J: Saya hanya tahan serangan dengan tukul besi dan hentak sekali sahaja dengan penyerang. Kalau tak silap saya hentakkan terkena pada bahagian kepala mangsa.

S: Adakah kamu kenal 2 lelaki India yang kamu kata menyerang kamu?

J: Saya tidak kenal mereka. Saya belum pernah pergi ke tempat kejadian sebelum itu. Hari itu saya ikut majikan saya ke situ untuk buat kerja ubahsuaian rumah kedai.

S: Berapa upah majikan bayar untuk kerja pada tarikh itu?

J: Majikan janji bayar RM100, tetapi saya hanya terima RM50 daripada majikan saya.

Percakapan dibacakan dan diterjemahkan kepada CHAI BEE KEONG dalam Mandarin dan diakui betul.

S: Adakah kamu ingin tambah atau pinda percakapan di atas?

J: Tidak ada.

[12] Learned counsel for the appellant had also highlighted to us the relevant part of the evidence which is most favourable to the accused. And that part, inter alia, reads as follows:

According to the evidence of Khoo Wong You (SP1)

Semasa signboard diturunkan, saya ada nampak orang awam disitu. Saya ada lihat tuan punya motorsikal datang. Dia bising-bising dan berkata kami tidak boleh tumpang motorsikalnya. Kemudian dia telah tolak OKT. OKT ada bekerja bersama pada masa itu.

iaitu sebuah kedai hardware. Di sana ramai orang India. Saya pergi ke kedai sebelah untuk meminta rotan sebagai senjata untuk standby kerana saya dan OKT dua orang sahaja. Disebabkan saya takut akan berlaku pergaduhan, jadi saya pergi ke kedai sebelah untuk mengambil rotan sebagai mempertahankan diri. Saya telah mengambil rotan.

ID4(11) dirujuk kepada saksi.

Ini adalah satu tukul besi. Pekerja saya menggunakan tukul besi ini untuk membuat pekerjaan mereka. Semua pekerja saya boleh gunakan tukul besi ini.

S: Setuju bahawa semasa orang India itu datang dekat tempat OKT bekerja, masa itu OKT hanya membuat kerja sahaja?

J: Setuju.

S: Orang India yang datang dekat OKT dan buat bising-bising dan marah pada OKT?

J: Ya.

S: Kamu tahu bahawa orang India itu selain dan marah-marah dan bising-bising juga minta wang daripada OKT?

J: Setuju.

S: Kamu boleh ingat bila orang India itu minta wang dari OKT, OKT ada kata bahawa beliau baru start kerja dan tiada wang?

J: Setuju, saya ada dengar OKT katakan dia tidak ada wang dan lelaki India tersebut banyak hot. Lelaki India tersebut marah-marah dan tolak OKT. Saya ada dengar lelaki India tersebut marah kerana kami sandarkan signboard pada motorsikalnya. Dia marah OKT dan tolak OKT.

S: Setuju masa itu di tempat itu terdapat kayu-kayu?

J: Ya, tempat itu ada kayu-kayu.

S: Bila orang India itu tolak OKT, bagaimana keadaan lelaki India tersebut?

J: Lelaki India tersebut seperti hendak memukul OKT.

S: Semasa orang India itu datang dan bising kepada OKT, semasa itu OKT hanya membuat kerja sahaja?

J: Ya.

[13] We have read the petition of appeal, the appeal record and the submissions of learned counsel and the deputy public prosecutor in detail. After much consideration to the submission of learned counsel we take the view that the appeal must be dismissed. Our reasons, inter alia, as follows:

(a) it is trite that appellate court is restrained from interfering on the finding of facts of the trial judgment, unless the exception stated by way of case law applies (see *Kyros International Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri* [2013] 2 MLJ 650). In *Yusoff bin Kassim v Public Prosecutor* [1992] 2 MLJ 183, Edgar Joseph Jr sitting in the Supreme Court had this to say:

> We recognised that the learned trial judge had a great advantage, denied to this court, of seeing and hearing the witnesses and the appellant testify. Be that as it may, there is a wealth of authority for the proposition that upon an issue depending upon oral evidence where there is plainly perjury on the one side or the other, a Court of Appeal ought to be greatly influenced by the opinion of the trial judge, who has seen and heard the witnesses, except where he has failed to observe inconsistencies or to take account of material circumstances or probabilities (see for example, *Khoo Sit Hoh & Ors v Lim Thean Tong* 1) An appellate court can, therefore, in appropriate cases, act upon its own view of the conflicting evidence (see *Coghlan v Cumberland* 2 and *Bigsby v Dickinson* 3).
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> In all the circumstances, having regard to the fact that the trial judge had overlooked or failed to take into account or given proper weight to, or drawn proper inferences from, the matters to which we have adverted, which otherwise might have caused him to come to a different conclusion, we were satisfied that he had not taken proper advantage of his having seen and heard the witnesses (per Lord Thankerton in *Watt or Thomas v Thomas* 4 and so the present appeal came within the range of those cases where we were at liberty to act upon our own view of the conflicting evidence. Having done so, we were amply satisfied that 'the case against the appellant was not proved with that certainty which is necessary in order to justify a verdict of guilty' (per Hewart CJ in *R v Wallace* 5 applied by Thomson CJ in *Jubri v Public Prosecutor* 6),

(b) in the instant case the learned judge had considered the evidence as well as the two exhibits stated above and found that the appellant had not made out a case of self defence or the Exception 4 of the Code. The threshold to satisfy for self defence under the Penal Code is very high. The defence of self defence is not a passport to kill when even there is a purported threat to the body or the person. In *Alandu a/l Santhanasamy v Public Prosecutor* [2014] 2 MLJ 508, the Court of Appeal on self defence had this to say:

> The threshold requirement to satisfy the defence of self defence is very high.

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> The evidence in the instant case shows that the appellant had entered the premise of the victim and had a quarrel which led to fatal injury which caused the death of the victim. On such facts at least it must be shown that the victim was the assailant and there was no opportunity for the appellant to escape and/or if any attempt to escape would have been futile. It would have been different if the victim had entered the appellant's premise with arms and subsequently there was a quarrel and assault and in the moment of heat, injuries were caused which led to death and the conduct was not punitive in nature. In such circumstances the appellant need not show that he could have escaped from his own house. The facts of the case will show that it was the appellant who entered the victim's house and not otherwise (see *Rozmi bin Yusof v Public Prosecutor* [2013] 5 MLJ 66),

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(c) however, in the course of making his submission, learned counsel for the appellant had informed us that the appellant does not wish to proceed on the issue of self defence and concentrated only on Exception 4 of s 300 of the Penal Code;

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(d) it is difficult to even fathom how there could have been a threat that too by a known person to an employee and that too in a public place in the manner alleged by the appellant in the police report as well as the statement. The quarrel in this case originated from deceased as a result of the 'sign board' and ended up in one fatal blow by the hammer with no visible injury or assault on the appellant. We have looked at this part of the evidence in detail and we do not think on the facts the appellant has made out a case of self defence;

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(e) we also do not think Exception 4 of s 300 will apply in this case. Exception 4 of s 300 reads as follows:

> Exception 4 — Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel, and without the offender having taken *undue advantage or acted in a cruel or unusual manner.* (Emphasis added.),

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(f) in the instant case the factual matrix does not warrant such injury and the use of the hammer to justify the Exception 4 of the Penal Code. The fact that the police did not call other witness, by itself on the facts of the case, would not have assisted the appellant on the issue of self defence and/or the Exception 4 of s 300 of the Penal Code.

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[14] It is well settled that it is in the hands of triers of facts to assess the quality of evidence and to determine whether the evidence on record justifies a conviction as well as sentence. We have perused the evidence in detail and we are satisfied that the view taken by the trial court on the relevant issues in our view was a reasonable view of the evidence on record, and the court had followed *Radhi*'s direction and rightly applied the maximum evaluation and beyond reasonable test and convicted the appellant (see *Public Prosecutor v*

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Mohd Aszzid Abdullah [2008] 1 MLJ 281; *Tong Kam Yew & Anor v Public Prosecutor* [2013] 4 MLJ 888; *Chin Kek Shen v Public Prosecutor* [2013] 5 MLJ 827).

[15] We are of the considered view it is a safe decision and appellate intervention is not warranted and the appeal has no merit. Accordingly we dismiss the appeal.

[16] We hereby order so.

Appeal dismissed.

Reported by Afiq Mohamad Noor